

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EQUITY GROWTH ASSET MANAGEMENT, a
California Corporation,

Plaintiff,

v.

MARC JON SOPER; and DOES 1-10,

Defendants.

No. C 11-5571 CW

ORDER GRANTING
PLAINTIFF'S MOTION
TO REMAND AND
DENYING
PLAINTIFF'S MOTION
TO SHORTEN TIME AS
MOOT
(Docket Nos. 8 and
9)

Plaintiff Equity Growth Asset Management moves to remand this case to San Mateo Superior Court. Defendant Marc Jon Soper has failed to respond to Plaintiff's motion to remand within the fourteen-day deadline. See Civil Local Rule 7-3(a). The Court takes the motion under submission on the papers. For the reasons set forth below, the Court GRANTS Plaintiff's motion.

BACKGROUND

Plaintiff filed this action on August 26, 2011 in San Mateo Superior Court, asserting a claim for unlawful detainer against Defendant Marc Jon Soper. Notice of Removal, Ex. A. Defendant was served with the complaint on September 6, 2011. Vratari Decl. ¶ 6; Notice of Removal, Ex. B, at 4. Defendant filed a demurrer on September 12, 2011, which the state court overruled. Notice of Removal ¶ 9, Ex. B.

Defendant removed this action to federal court on November 16, 2011. In his Notice of Removal, Defendant states that this Court has subject matter jurisdiction, because his demurrer

1 alleged that Plaintiff violated the federal Protecting Tenants at
2 Foreclosure Act of 2009.

3 LEGAL STANDARD

4 A defendant may remove a civil action filed in state court to
5 federal district court so long as the district court could have
6 exercised original jurisdiction over the matter. 28 U.S.C.
7 § 1441(a). Title 28 U.S.C. § 1447(c) provides that if, at any
8 time before judgment, it appears that the district court lacks
9 subject matter jurisdiction over a case previously removed from
10 state court, the case must be remanded. On a motion to remand,
11 the scope of the removal statute must be strictly construed. Gaus
12 v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). "The 'strong
13 presumption' against removal jurisdiction means that the defendant
14 always has the burden of establishing that removal is proper."
15 Id. Courts should resolve doubts as to removability in favor of
16 remanding the case to state court. Id.

17 DISCUSSION

18 It is well-established "that a suit 'arises under' federal
19 law 'only when the plaintiff's statement of his own cause of
20 action shows that it is based upon [federal law].'" Vaden v.
21 Discover Bank, 129 S. Ct. 1262, 1272 (2009) (quoting Louisville &
22 Nashville R. Co. v. Mottley, 211 U.S. 149, 152 (1908)) (formatting
23 in original). Federal jurisdiction may not rest upon "an actual
24 or anticipated defense or counterclaim." Id.; see also, Eden
25 Housing Mgmt., Inc. v. Muhammad, 2007 WL 4219397, at *2-3 (N.D.
26 Cal.) (finding no federal question jurisdiction where plaintiff's
27 unlawful detainer complaint presented no federal question and
28 defendant sought to assert section 1983 counterclaims). In the

1 instant case, Plaintiff's complaint alleges only unlawful detainer
2 pursuant to California Code of Civil Procedure § 1161a. Removal
3 cannot be based solely on allegations that Defendant raises in his
4 defense.

5 Further, federal law requires that a notice of removal "be
6 filed within 30 days after the receipt by the defendant, through
7 service or otherwise, of a copy of the initial pleading setting
8 forth the claim for relief upon which such action or proceeding is
9 based." 28 U.S.C. § 1446(b). Defendant was served with the
10 complaint on September 6, 2011 and did not file a notice of
11 removal until November 16, 2011, more than two months later.
12 Accordingly, Defendant has waived "the right to remove by failing
13 to file a notice of removal within the 30-day time limit." BDA
14 Inv. Props. LLC v. Sosa, 2011 U.S. Dist. LEXIS 54524, at *10 (C.D.
15 Cal.) (citing Goldberg v. CPC Int'l, Inc., 495 F. Supp. 233, 236-
16 37 (N.D. Cal. 1980)).

17 CONCLUSION

18 For the foregoing reasons, Plaintiff's motion to remand is
19 GRANTED (Docket No. 8). Plaintiff's motion to shorten time to
20 hear its motion to remand is DENIED as moot (Docket No. 9).

21 The Clerk shall remand this action to San Mateo Superior
22 Court and close the file.

23 IT IS SO ORDERED.

24
25 Dated: 12/27/2011

26 
27 CLAUDIA WILKEN
28 United States District Judge